United States Court of Appeals

for the Second Circuit

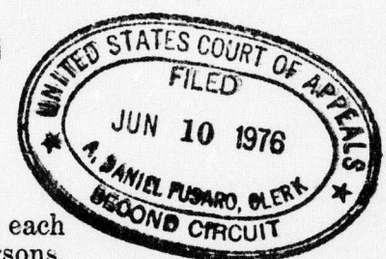
BRIEF FOR APPELLANT

ORIGINAL

76-7168

United States Court of Appeals

FOR THE SECOND CIRCUIT



FRANK SANTOS, CARL GUERRIERRI, and MARIO VOZZO, each of them individually and on behalf of all other persons, members of local unions affiliated with Painters' District Council # 9 of New York City and the International Brotherhood of Painters and Allied Trades, employed or seeking employment as woodwork finishers within New York City, similarly situated,

Appellants,

—*v.*—

DISTRICT COUNCIL OF NEW YORK CITY AND VICINITY OF UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO,

Appellee.

B P/S

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK GRANTING SUMMARY JUDGMENT FOR THE DEFENDANT.

APPELLANTS' BRIEF

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

FRANK SANTOS, CARL GUERRIERRI, and MARIO VOZZO, each of them individually and on behalf of all other persons, members of local unions affiliated with Painters' District Council #9 of New York City and the International Brotherhood of Painters and Allied Trades, employed or seeking employment as woodwork finishers within New York City, similarly situated,

Appellants,

-v.-

DISTRICT COUNCIL OF NEW YORK CITY AND VICINITY OF UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO,

Appellee.

76-7168

On Appeal from an Order of the United States District Court for the Southern District of New York Granting Summary Judgment for the Defendant.

APPELLANTS' BRIEF

Issue Presented

Where an Article in the constitution of a labor federation, which provides for arbitration of jurisdictional disputes between affiliates, contains a clause purporting to bar any affiliate from suit to enforce its terms or to enforce an arbitral decision made thereunder, is such clause valid and, if so, does it bar suit by interested employees, members of an affiliate, under Section 301(a) of the Labor-Management Relations Act of 1947, for violation of the Article and non-compliance with the arbitral decision on the part of another affiliate, where the labor fede-

ration has failed to enforce the arbitral decision by means available to it?

Statement of the Case

The Appellants, members of Painters' Union, brought suit below to enforce certain work assignment rights established by the AFL-CIO Constitution and, in particular, to enforce an arbitral award of the AFL-CIO Impartial Umpire, acting under the provisions of Article XX of the AFL-CIO Constitution, which established their rights, as members of Painters, to assignment of work as Woodwork Finishers in some 17 woodwork shops in New York City.

Suit was brought under Section 301(a) of the Labor-Management Relations Act, 29 U.S.C. 185(a), which provides inter alia that "Suits for violation of contracts ... between any ... labor organizations /representing employees in an industry affecting commerce/, may be brought in any district court of the United States having jurisdiction of the parties...."

The district court granted summary judgment for defendant Carpenters Union (J.A. 66a-67a) on the ground that Section 20 of Article XX of the AFL-CIO Constitution purports to bar any affiliate from resorting to court to determine any dispute of the type with which Article XX is concerned or to enforce any determination reached under such article (J.A. 58a-59a, 63a-64a).

The district court's decision is unreported. It is reprinted, however, at J.A. 60a-67a.

The Appellants, members of Painters' Union*, are either employed or seeking employment in New York City as Woodwork Finishers. They bring suit on their own behalf and on behalf of the class of such persons, members of Painters' Union, who will be entitled to such work as Woodwork Finishers if they are successful in this action (J.A. 3a).

Section 3 of Article XX of the AFL-CIO Constitution (J.A. 51a) requires each affiliate (such as Carpenters' Union, or Painters' Union) to respect every other affiliate's established work relationships, which latter are defined as relationships where members of a labor organization have customarily performed work at a particular plant or work site. The section further provides that

> "No affiliate shall by agreement or collusion with any employer or by the exercise of economic pressure seek to obtain work for its members as to which an established work relationship exists with any other affiliate, except with the consent of such affiliate."

As the Complaint duly alleges (J.A. 7a-8a), the Carpenters Union, by its New York District Council (defendant-appellee here), violated the above provision by sending its members through the Painters' picket lines during strikes in 1967 and 1969, and has continued, by agreement or collusion with

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* For purposes of simplification, the two labor organizations are referred to as "Painters' Union" and "Carpenters' Union" respectively; their full names are International Brotherhood of Painters and Allied Trades and United Brotherhood of Carpenters and Joiners of America, respectively; both are AFL-CIO affiliates. The defendant is the New York subordinate body, or District Council, of Carpenters' Union (which is itself composed of local unions); similarly, Painters has a New York subordinate body, also a District Council composed of local unions.

employers, or through economic pressure, to take woodwork finishing work away from members of Painters' Union. Specifically, Painters' Union (through its New York District Council) was the bargaining representative for woodwork finishers employed by some 21 woodwork shops in New York City, and its members customarily performed such work at such shops. In July 1967, its collective bargaining agreement with the woodwork employers expired and it went on strike. During the strike, Carpenters' Union sent its members through the Painters' picket lines to perform the struck woodwork finishing work. The strike terminated without an agreement, but then began again in March 1969 -- and upon its resumption the Carpenters' Union sent more of its members through the Painters' picket lines to perform woodwork finishing work. And Carpenters' Union has continued to cause its members to perform such work at the 21 shops.

Accordingly, in 1969, the Painters' Union brought proceedings under Article XX of the AFL-CIO Constitution. A hearing was had before David L. Cole, an Impartial Umpire appointed by the AFL-CIO President in accordance with Article XX, and on September 4, 1969, Umpire Cole handed down a decision (J.A. 17a-21a), upholding Painters' charges as to 17 of the shops (J.A. 20a-21a), while finding that the remaining four shops must be excluded since, in those shops, a mixed practice had prevailed (J.A. 20a).

The meaning of Umpire Cole's determination was that Carpenters' Union was found to have violated Section 8 in regard to the 17 shops listed by Umpire Cole (J.A. 21a) and that it was therefore obligated to remove its members from the performance of

woodwork finishing work in those shops. Accordingly, AFL-CIO President George Meany wrote to the President of the Carpenters Union on February 27, 1970, advising him as follows (quoted from Olsen Affidavit, J.A. 37a):

> "This is in reference to the /Cole Determination/ concerning what action is necessary on the part of the United Brotherhood of Carpenters and Joiners to implement the determination of Impartial Umpire Cole rendered on September 4, 1969.
>
> "Please be advised that your organization must make certain that your members immediately cease performing the wood finishing work in the wood finishing and spray rooms or areas of the following 17 shops in Greater New York City /listing the same 17 shops designated in Umpire Cole's determination/."

The Complaint duly alleges that the Painters' Union has, since the date of Umpire Cole's determination, repeatedly requested the Carpenters' Union to obey and abide by the determination, but the Carpenters' Union (by its defendant District Council) has refused and still refuses to comply (j.A. 10a).

The Complaint further alleges, in detail, that the three Woodwork Finishers, plaintiffs-appellants, have repeatedly appealed and protested the failure of the Carpenters' Union to comply with the Umpire's decision, and have exhausted all remedies within their labor organization available to them (J.A. 11a-13a). In addition, plaintiff Vozzo, together with three other (non-plaintiff) Woodwork Finishers, have written to the AFL-CIO president, asking that the matter of Carpenters' non-compliance be taken up by the AFL-CIO sub-committee (J.A. 12a), and the Painters' General President has likewise written to the

AFL-CIO president, making the same request (J.A. 12a).

However, although Article XX establishes sanctions to be applied to a non-complying affiliate (J.A. 55a-56a), no such sanctions have been applied by the AFL-CIO to the Carpenters' Union. Instead, all that has been done is that an AFL-CIO Vice President Emeritus has conducted interminable meetings, continuing through the end of 1972, through 1973, and into mid-1974 (Olsen affidavit, J.A. 42a), which have come to nothing. Nor has Carpenters' Union appealed from the Umpire's decision in accordance with Section 14 of Article XX (J.A. 54a), or claimed justification for its actions in accordance with Sections 4 and 17 (J.A.52a, 57a). Carpenters' Union has simply defied the Umpire's determination and the AFL-CIO has done nothing effective to secure compliance by it.

The district court based its grant of summary judgment for defendant Carpenters' Union (J.A. 66a-67a) on Section 20 of Article XX of the AFL-CIO Constitution (J.A. 58a-59a, 63a-64a). Section 20 provides as follows:

> "Sec. 20. The provisions of this Article with respect to the settlement and determination of disputes of the nature described in this Article shall constitute the sole and exclusive method for settlement and determination of such dispute and the provisions of this Article with respect to the enforcement of such settlements and determinations shall constitute the sole and exclusive method for such enforcement. No affiliate shall resort to court or other legal proceedings to settle or determine any disputes of the nature described in this Article or to enforce any settlement or determination reached hereunder."

POINT I.

SECTION 20, TO THE EXTENT THAT IT PURPORTS TO DENY JUDICIAL ENFORCEMENT OF AN ARBITRAL AWARD MADE UNDER ARTICLE XX, IS ILLEGAL AND VOID AS AGAINST PUBLIC POLICY.

It is hornbook law that any contractual provision which purports to deny a judicial remedy for violation of the contract is illegal and void. While enforcement of rights created by the contract may be conditioned, by the contract, upon prior resort to arbitration or to some other dispute-settlement procedure, any provision denying ultimate resort to the courts is against public policy and therefore void. Williston on Contracts, §§ 1725, page 915 (3rd Ed. 1972); 17 C.J.S., Contracts, Sec. 229(1), pages 1069-71; 17 Am. Jur. 2d, Contracts, Sec. 193, page 564.

One early statement of the principle is given in Guaranty Trust & Safe Deposit Co. v. Green Cove Springs & M.R. Co., 139 U.S. 137, 143, 35 L.Ed. 116, 118, 11 S.Ct. 512, (1891), involving a provision in a mortgage deed of trust which provided that neither the whole nor any part of the mortgaged premises should be sold, under proceedings of law or at equity, for recovery of the principal or interest due, it being the parties' agreement that the mode of sale provided by the mortgage be exclusive. The Supreme Court held that the clause was "open to the objection of

attempting to provide against a remedy in the ordinary course of judicial proceedings, and oust the jurisdiction of the courts, which, as is settled by the uniform current of authority, cannot be done" (citing authorities.)

The district court distinguished Guaranty Trust, etc. v. Green Cove, supra, and dismissed the proposition stated there by the Supreme Court, by noting that the case "involved a term in a deed of trust which limited the mode of sale of property, and which covenant was not intended for the benefit of any person other than the mortgagor" (J.A. 64a) -- by suggesting, in other words, that the principle is limited to the narrow facts at issue in Green Cove. That by so doing the district court misconceived the breadth of the princple may be indicated by a review of other authorities commonly cited in support of it.

In McCullough v. Clinch-Mitchell constr. Co., 71 F.2d 17, 21 (8th Cir. 1934), the parties to a construction contract had agreed to submit all disputes to arbitration by the Chief Engineer, and further provided that "each and every of said parties hereby waives any and all right of action, suit or suits, or other remedy, in law or otherwise, under this agreement, or arising out of same." The Court commented, 71 F.2d at 21,

> "It is in the last just quoted provision we are interested. In so far as the waiver provision is concerned, it is ineffective to prevent judicial actions, whatever may be the effect of the provision or action taken under it upon such actions. It is thus ineffective because it seeks to deny the parties judicial remedies and, as such, is contrary to public policy."

Beuttas v. United States, 60 F.Supp. 771, 780 (Ct.Cl.

1944), rev'd on other grounds, 342 U.S. 768, 89 L.Ed. 1354, 65 S.Ct. 1000, also involved a construction contract. In the Court of Claims, the Government argued, in effect, that the parties had agreed in advance of the dispute to waive their right to sue for breach; the Court held that any agreement to that effect was contrary to public policy and therefore void, citing Green Cove, supra, and numerous other authorities.

And although the application of the principle, based upon Kentucky law, that is given in Gatliff Coal Co. v. Cox , 142 F.2d 876, 881 (6th Cir. 1944), may likely be outdated, the fact that it extends properly to collective bargaining agreements -- the type of contract at issue in that case -- may be taken as clearly established.

And cf. also: In re Streck's Estate, 183 N.E.2d 26, 31, 35 Ill.App.2d 473 (App.Ct. Ill. 1962), involving a clause in a partnership agreement providing that if anyone brought the surviving partner into court, in any proceeding, the share or shares of such person would be forfeited to the surviving partner. As the Illinois court commented, 183 N.E.2d at 31, "There is ample authority to support the position taken that such a clause is invalid as against public policy."

And see also: Brucker v. Georgia Casualty Co., 32 S.W.2d 1088, 326 Mo. 856 (Sup. Ct. Mo., en banc, 1930) and State ex rel. S. F. Mut. Auto Ins. Co. v. Craig, 364 S.W.2d 343, 345, 95 A.L.R. 2d 1321, 1325 (Ct. App. Mo. 1963), involving clauses,

in construction contracts, purporting to bar suit.

In Matter of Brown v. Order of Foresters, 176 N.Y. 132, 68 N.E. 145 (1903), relator, claiming that he had been expelled by the association in violation of its constitution and by-laws, brought suit under that constitution and by-laws for relief; he was confronted with provisions of these same constitution and by-laws providing for appeals to various tribunals within the association and providing also that no member shall be entitled to bring any civil action or legal proceeding until he shall have exhausted all such appeals.* Among the appeals available was one which could not be available for more than a year following his expulsion, and that would require a hearing in California. New York's Court of Appeals ruled that (Ibid, 176 N.Y. at 137-138)

> "It is argued that these regulations or laws debar the relator from any remedy or relief in the courts of this state. Conceding that the constitution and by-laws of the defendant are a part of the contract between the parties and the general rule that the law permits great freedom of action in making contracts, there are some restrictions placed upon that right by legislation, by public policy and by the nature of things.... The defendant had no power, under the circumstances of this case, to deprive the relator of the right to resort to the civil courts for redress, or to compel him to seek his remedies by appeal to the various judicatories erected within the order. The manner in which these courts are organized, the expense and delay involved in procuring a hearing in another and very remote jurisdiction, were obstacles that amounted almost to a denial of justice."

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* As noted below, and as Professor Summers notes in his article, cited infra, such provisions do not, in the more modern cases, receive even the "verbal curtsy" of formal consideration. They are either wholly ignored or swallowed up in the court's own rules concerning exhaustion. Cf.: Summers, infra, and Madden v. Atkins, 4 N.Y.2d 283, 291, 151 N.E.2d 73, 174 N.Y.S.2d 633 (1958); Browne v. Hibbetts 290 N.Y. 459, 266-268, 49 N.#.2d 713 (1943)

The principle that clauses, in a contract or in the constitution or by-laws of an association, which purport to bar a party, or a member of the association, from bringing suit for violation of that contract or of that constitution or by-laws are void as a matter of public policy has had particular application to the law of labor organizations. It is almost axiomatic that clauses in the constitutions of labor organizations -- such as the constitution of the AFL-CIO -- which purport to bar or unreasonably impede suit in court to enforce rights created by those constitutions are void. Most cases concern clauses which, though not purporting to bar such suit absolutely, nevertheless purport to require the member to exhaust remedies that are time-consuming, or otherwise burdensome, or simply futile.

As Professor Clyde Summers (of Yale Law School), the leading student of the law of intra-union disputes, has noted, the courts routinely treat such provisions in union constitutions as void without even giving them the "verbal curtsy" of formal consideration. Summers, The Law of Union Discipline: What the Courts Do in Fact, 70 Yale L.J. 175, at 181. And cf. the cases duscyssed in the article cited, at pages 207-210.

Nor is the voiding of such clauses confined to discipline cases. The courts treat any unreasonable limitation upon the right of union members or affiliates to resourt to the courts, to enforce rights created by the union constitution, as void, without limitation to the right that is being asserted. Cf. Summers, Judicial

Regulation of Union Elections, 70 Yale L.J. 1221, at 1248-1251 (1961).

The Courts have, at common law, adopted a doctrine concerning judicial non-interference in labor organizations which provides in effect that union members should be required to exhaust intra-union remedies, so far as they are reasonable, before resorting to court. As Professor Summers has noted, however, (The Law of Union Discipline, supra, 70 Yale L.J. at 181), that doctrine is a product of judicial policy; it does not rest upon the provisions of the union constitutions. And the same doctrine -- likewise one of judicial policy, without reference to any provisions of the union's constitution -- is expressed in Section 101(a)(4) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 411(a)(4) (the proviso to such section). As this Court noted in Detroy v. Amer. Guild of Variety Artists, 286 F.2d 75, 79 (2nd Cir. 1961), it is the court that "may" require exhaustion under the statute, not the union constitution. And as this Court likewise noted, at loc. cit., the doctrine itself has been "almost swallowed up" by "exceptions" to the exhaustion requirement (citing the first article by Professor Summers, supra). And cf.: Libutti v. DiBrizzi, 337 F.2d 216 (2d Cir. 1964), aff'd on rehearing, Ibid, 343 F.2d 460 (2nd Cir. 1965) -- the first decision of this Court dealing with the exhaustion requirement in accordance with the federal statute, the second in accordance with New York common law.

It is plain that the principle of public policy expressed

in this line of cases is applicable to a suit brought, as the instant one is, for enforcement of rights created by Article XX of the Constitution of the AFL-CIO. Any provision of Article XX which purports, as does Section 20, to bar such suit or to burden it unreasonably is void as against public policy.

Thus, both as a general principle of law and public policy, and as a principle peculiarly applicable to suits for enforcement of rights created by the constitution of a labor organization, it is clear that any provision of the AFL-CIO's Constitution which purports to deny to affiliates, or to interested members of affiliates, the right to bring suit thereunder is void and cannot be asserted as a barrier to suit to enforce rights created by Article XX of that Constitution or to enforce the award of the Impartial Umpire, acting thereunder.

POINT II.

SECTION 20 IS CONTRARY TO AND IN CONFLICT WITH CONGRESS'S POLICY FAVORING JUDICIAL ENFORCEMENT OF CONTRACTS BETWEEN LABOR ORGANIZATIONS PROVIDING FOR THE ADJUSTMENT OF WORK-ASSIGNMENT JURISDICTIONAL DISPUTES.

Section 301(a) of the Labor-Management Relations Act of 1947, 29 U.S.C. 185(a), establishes federal court jurisdiction over suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce, and over suits for violation of contracts "between any such labor organizations." The latter (quoted) language is not surplusage. Congress intentionally provided a federal forum for actions on contracts between labor organizations, including actions to enforce jurisdictional and "no-raiding" agreements. Cf. Retail Clerks International Association v. Lion Dry Goods, Inc., 369 U.S. 17, at 26, 7 L.Ed.2d 503, 509, 82 S.Ct. 541, 547 (1962), citing United Textile Workers v. Textile Workers Union, 258 F.2d 743 (7th Cir. 1958)*

Section 301(a) is not jurisdictional only; it expresses a substantive Congressional policy favoring enforcement of such contracts. It expresses also Congress's belief that industrial peace can best be obtained that way. Cf. Textile Workers Union v.

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* Additionally, it is clear that the constitution of a labor organization -- such as the constitution of the AFL-CIO -- is a contract "... between any such labor organizations" within the meaning of Section 301(a); cf. Parks v. International Brotherhood of Electrical Workers, 314 F.2d 886, 914-917 (4th Cir. 1963), cert. den. 372 U.S. 976 (1973); National Association of Letter Carriers v. Sombrotto, 449 F.2d 915, 918 (2d Cir. 1971); Abrams v. Carrier Corp., 434 F.2d 1234, 1247-48 (2d Cir. 1970), cert. den. sub nom. United Steelworkers of America v. Abrams, 401 U.S. 1009, 28 L.Ed.2d 545, 91 S.Ct. 1253 (1971).

Lincoln Mills, 353 U.S. 448, at 452, 458, 1 L.Ed.2d 972, at 978, 979, 77 S.Ct. 912 (1957) Thus the policy that Congress expressed in Section 301(a) is not only sufficiently powerful to sustain district court jurisdiction over enforcement suits, even though the conduct involved amounts to, or arguably is, an unfair labor practice[1]; it is also sufficiently powerful to override the common-law rule against enforcement of executory agreements to arbitrate[2], and to override the substantive and procedural requirements of the Norris-LaGuardia Act, 29 U.S.C. 101 et seq., as regards the enforcement of executory agreements to arbitrate[3], as regards also enforcement of arbitration awards themselves[4], and as regards enforcement of no-strike agreements, either express[5] or merely implied.[6]

Congress's policy favoring judicial enforcement of contracts either between an employer and a labor organization or

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1 see: Hines v. Anchor Motor Freight, Inc., ___ U.S. ___, at ___, 44 USLW 4299, at 4301, 47 L.Ed.2d 231, at 240, 96 S.Ct. 1048, at 1055 (March 3, 1976), and cases cited there, starting with Smith v. Evening News Assn., 371 U.S. 195, 9 L.Ed.2d 246, 83 S.Ct. 267 (1962).

2 cf. Textile Workers Union v. Lincoln Mills, supra, 353 U.S. at 456, 1 L.Ed.2d at 980, 77 S.Ct. at 917 .

3 cf. Ibid, 353 U.S. at 458-459, 1 L.Ed.2d at 981-982, 77 S.Ct. at 918-919.

4 cf. United Steelworkers v. Enterprise Corp., 363 U.S. 593, 4 L.Ed.2d 1424, 80 S.Ct. 1358 (1960). And compare: United Textile Workers v. Textile Workers Union, supra, and Int'l Brotherhood of Firemen and Oilers v. Int'l Ass'n of Machinists, 338 F.2d 176 (5th Cir. 1964), for judicial enforcement of such awards made pursuant to jurisdictional contracts between labor organizations, likewise without reference to the requirements of Norris-LaGuardia.

5 cf. Boys Markets v. Retail Clerks Union, 398 U.S. 235, 26 L.Ed.2d 199, 90 S.Ct. 1583 (1970).

6 cf. Gateway Coal Co. v. United Mine Workers, 414 U.S. 368, 38 L.Ed.2d 583, 94 S.Ct. 629 (1974).

between labor organizations is especially compelling when employment rights of individuals are involved. Thus a provision in a collective bargaining agreement requiring arbitration of grievances cannot bar an employee from bringing suit for violation of the contract, under Section 301(a), where the labor organization has wrongfully failed to press his grievance to arbitration; cf. Vaca v. Sipes, 386 U.S. 171, 17 L.Ed.2d 842, 87 S.Ct. 903 (1967). And even a clause in a collective bargaining agreement providing that arbitration awards shall be "final and binding," and purporting on its face to bar judicial review, cannot bar an employee from relitigating in a a suit under Section 301(a) a grievance already decided adversely toward him by the arbitrator, where the labor organization representing him failed to prosecute his grievance in good faith -- even though both the arbitrator and the employer have acted in unchallengeable good faith; cf. Hines v. Anchor Motor Freight, Inc., supra, ___U.S.___, 47 L.Ed.2d 231, 96 S.Ct. 1048, 44 U.S.L.W. 4299 (March 3, 1976).

In short, Congress's policy may override even explicit provisions of a contract, where those provisions appear on their fact to bar an employee from bringing suit, just as that same policy may imply a no-strike clause where none appears on the face of the contract.

There is no reason to doubt that this same Congressional policy may override an explicit contractual provision that appears on its face -- as does Section 20 of Article XX of the AFL-CIO Constitution -- to bar any suit for the enforcement of an arbitration award rendered pursuant to the contract. If such a provision

were allowed to bar suit for the vindication of rights created by or recognized in the arbitration award, Congress's policy of enforcing such arbitration awards would be negated and important rights of individual employees -- such as the rights of that class of persons entitled, under the contract, to assignment of woodwork finishing work -- would be left without protection. And the considerations favoring the overriding of such a provision are especially strong where, as here, the labor organization has failed to apply the informal sanctions provided by the dispute settlement agreement at issue (Article XX of the AFL-CIO Constitution).

Thus the policy that Congress expressed in Section 301(a) supports and re-affirms the traditional policy of equity and common law: namely, that any clause in a contract purporting to bar ultimate enforcement of that contract, or to bar judicial enforcement of an arbitration award made pursuant to the contract, is void as against public policy. Section 20 of Article XX of the AFL-CIO Constitution stands condemned, therefore, both by traditional public policy and by the Congressional policy set forth in Section 301(a).

As noted earlier, the considerations supporting the Congressional policy are especially strong here, since the arbitration award at issue here determines work-assignment jurisdiction -- and hence the rights of a specific class of persons to specific employment opportunities -- as distinguished from an issue as to representation. The distinction between the two types of jurisdictional disputes is a significant one: cf. Carey v.

Westinghouse, 375 U.S. 261, 11 L.Ed.2d 320, 84 S.Ct. 401 (1964) -- not only because one concerns material rights of employees while the other does not, but also because Congress has carefully distinguished the two, giving paramount i rtance, in the case of work-assignment disputes, to judicial enforcement of contracts between labor organizations providing for adjustment thereof, while, in the case of representation disputes, giving primary responsibility to the NLRB.

By the Labor-Management Relations Act of 1947, Congress, while also adopting Section 301(a), added Section 10(k) to the National Labor Relations Act, 29 U.S.C. 160(k), providing by its terms that an agreement between labor organizations for the adjustment of work-assignment disputes shall take precedence over NLRB determination of such issues. As the Supreme Court noted in Carey v. Westinghouse, supra, 375 U.S. at 266, 11 L.Ed.2d at 325, 84 S.Ct. at 406 , "... § 10(k) not only tolerates but actively encourages voluntary settlements of work assignment controversies between unions...."

By the adoption of Section 10(k), simultaneous with that of Section 301(a), Congress gave specific, as well as general, expression -- specific in regard to the enforcement of agreements between labor organizations providing for determination of work assignment disputes -- to its policy favoring the judicial enforcement of contracts between labor organizations or between an employer and a labor organization. But Congress's policy would be frustrated if force and effect were given to contractual provisions that purport to bar judicial enforcement of such contracts.

In International Hod Carriers Local 33 v. Mason Tenders District Council, 291 F.2d 496, at 504 (2d Cir. 1960), Judge Medina, speaking for this Court, reviewed the import of Section 10(k) and noted that a failure of the federal courts to enforce contracts between labor organizations settling or providing for the settlement of work-assignment disputes "would run counter to the position that Congress has accorded to voluntary adjustment." And viewing the policy expressed in Section 10(k) together with the broader policy expressed by Congress in Section 301(a), he commented, for this Court, that if it failed to enforce agreements for the adjustment of work assignment disputes

> "... we think we would emasculate Section 301(a) and leave the parties to contracts between labor organizations wholly at the mercy of those who wish to repudiate their bargains without having any valid reason to do so.... It is difficult for us to see how any such result, in the face of the plain language of Section 301(a), can be beneficial to labor."

Judge Medina's words may well be repeated here. If a provision such as Section 20, purporting to bar judicial enforcement (or judicial review) of an arbitration determination, adjusting a work assignment dispute, made pursuant to a voluntary contract between labor organizations, were given effect and thereby allowed to bar any suit for such judicial enforcement, such a ruling would run counter to the position that Congress has accorded to voluntary adjustment of such disputes, and would emasculate Section 301(a) and leave the parties to contracts between labor organizations, as well as the employees whose interests are affected by such contracts, wholly at the mercy of those who wish to repudiate their bargains without having any valid reason to do so.

POINT III.

PLAINTIFFS, AS EMPLOYEES WITH AN INTEREST IN THE ASSIGNMENT OF WOODWORK FINISHING WORK, HAVE STANDING TO SUE UNDER SECTION 301(a).

The Court below noted that an issue had been raised as to the standing of plaintiffs to bring suit under Section 301(a) and, citing Abrams v. Carrier Corp., supra, 434 F.2d 1234, 1249-50 (2d Cir. 1970), cert. den. sub nom. United Steelworkers v. Abrams, 401 U.S. 1009 (1971), suggested (without deciding) that perhaps they did not (J.A. 66a). In order to emphasize the substantiality of the suit brought by plaintiffs-appellants, it is well to point out here that the suggestion has no weight.

The Abrams plaintiffs were employees at the Carrier Corp. who brought suit under Section 301(a) against three defendants, to wit: against Carrier Corporation, against United Steelworkers of America (their own parent international) and against Sheet Metal Workers Union. (They also brought suit against several of the defendants under other legal theories.) The Section 301(a) suit against Carrier Corporation was based upon the collective bargaining agreement; this Court upheld their standing to do so, and gave them leave to amend for that purpose; Ibid, 434 F.2d at 1241-47. Their suit against United Steelworkers was based upon the charter agreement between the parent Steelworkers and its local union at the Carrier plant: plaintiffs contended that Steelworkers had failed in its contractual duty to give backing and support to the local; this Court upheld plaintiffs' standing

to bring such suit and gave them leave to amend for that purpose; Ibid, 434 F.2d at 1247-1249. Their suit against Sheet Metal Workers was based upon a no-raiding agreement between it and Steelworkers which Sheet Metal Workers breached by petitioning for an NLRB-conducted representation election among the Carrier employees. This Court did not uphold their standing to bring that suit, noting that whatever harm was suffered as a result of Sheet Metal Workers' breach was suffered by Steelworkers; there was no harm to individual employees "except disappointment that a majority of Carrier employees shifted sentiment to another union." In short, since the issue was one of representation, and not one of work assignment, no material interests of plaintiffs were at stake. Ibid, 434 F.2d at 1249-50.

The Abrams holdings would raise no issue of standing here -- indeed, they plainly support the standing of individual employees to sue both on a contract between an employer and a labor organization (that with Carrier) and on a contract between labor organizations (that between Steelworkers and the local union) -- were it not for some language at page 1249 of this Court's opinion, to wit:

> "... since it is clear that the appellants, not being signatories to the Agreement /between Steelworkers and Sheet Metal Workers/, have no standing to sue."

Obviously, it was and is of no importance whether they were or were not signatories to the agreement in question: they were plainly not signatories either to the collective bargaining agreement or to the charter agreement between Steelworkers and its local union, but this did not affect their standing to sue for violation of those two contracts. Yet the language suggests that

the question whether one is or is not signatory to an agreement somehow affects one's right to bring suit, under Section 301(a), for violation of that agreement.

The legislative history of Section 301(a) makes it clear that "interested employees" were to have standing to sue under that section; see the exchange between Congressmen Barden and Hartley quoted in Textile Workers Union v. Lincoln Mills, supra, 353 U.S. at 456, 1 L.Ed.2d at 980, 77 S.Ct. at 917 . And the language of the section itself leaves no doubt: it provides that suits for violation of certain contracts "may be brought"; it does not delimit who may bring them.

At any rate, the question of whether individual employees, with an interest in the dispute, have standing to sue under Section 301(a) for violation of contracts between an employer and a labor organization or between labor organizations has been fully analyzed and decided by the Supreme Court in Smith v. Evening News Assn, 371 U.S. 195, 9 L.Ed.2d 246, 83 S.Ct. 267 (1962), Vaca v. Sipes, 386 U.S. 171, 183-184, 17 L.Ed.2d 842, 854, 87 S.Ct. 903 (1967), and Hines v. Anchor Motor Freight, Inc., ___U.S.___, 47 L.Ed.2d 231, 96 S.Ct. 1048, 44 U.S.L.W. 4299 (March 3, 1976). Those holdings -- and this Court's holdings in Abrams v. Carrier Corp., supra -- plainly establish that individual interested employees, who are not signatory to any agreement at all, may sue under Section 301(a) for violation of a contract between an employer and a labor organization, or for violation of a contract between labor organizations.

CONCLUSION

For all the foregoing reasons, the decision of the district court for the Southern District of New York, granting summary judgment for defendant, should be reversed and the cause remanded for further proceedings.

Respectfully submitted,

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Service of ~~three~~ Two copies of the within Brief

is hereby admitted this 10th day of June 1926

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